

CAUSE NO. _____

**1ST CHOICE ACCIDENT &
INJURY, LLC and
PROHEALTH MEDICAL GROUP
MANAGEMENT, LLC**

VS.

**THE COX PRADIA LAW
FIRM, P.L.L.C.**

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ **JUDICIAL DISTRICT**

**PLAINTIFFS' ORIGINAL PETITION,
REQUEST FOR DISCLOSURE AND RULE 193.7 NOTICE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, 1st Choice Accident & Injury, LLC d/b/a Houston Pain Relief & Wellness Clinic ("1st Choice") and ProHealth Medical Group Management, LLC d/b/a ProHealth Medicine ("ProHealth"), collectively referred to herein as "Plaintiffs," complaining of The Cox Pradia Law Firm, P.L.L.C. ("TCPLF"), referred to herein as "Defendant", and for cause of action would respectfully show the following:

**I.
DISCOVERY CONTROL PLAN**

1. Discovery in this cause will be conducted under Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
RULE 47 NOTICE**

2. Plaintiffs seek monetary relief over \$200,000 but not more than \$1,000,000. The damages sought are within the jurisdictional limits of this Court.

III. **PARTIES**

3. Plaintiff, 1st Choice Accident & Injury, LLC, is a Texas limited liability company authorized to conduct business in Texas, with its principal place of business in Harris County, Texas.

4. Plaintiff, ProHealth Medical Group Management, LLC, is a Texas limited liability company authorized to conduct business in Texas, with its principal place of business in Harris County, Texas.

5. Defendant, The Cox Pradia Law Firm, PLLC, is a Texas domestic limited liability company authorized to conduct business in Texas, with its principal place of business in Harris County, Texas, and may be served with process by serving its registered agent, Troy Pradia, at 1415 North Loop West, Suite 200, Houston, Texas 77008 or wherever he may be found.

IV. **JURISDICTION & VENUE**

6. Plaintiffs seek damages under the common law and statutory laws of the State of Texas, and the amount in controversy is within the subject matter and monetary jurisdiction of the District Court of Harris County, Texas. This Court has jurisdiction over the parties, jurisdiction over the subject matter of this dispute, and jurisdiction to award all relief prayed for herein.

7. Venue is proper in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002, because the contracts were entered into in, or all or a substantial part of the events giving rise to this cause of action occurred in Harris County, Texas.

V. **AGENCY**

8. Any time it is alleged in this pleading that defendant did an act or failed to do any act or thing, it is meant that the defendant or his authorized, apparent, or ostensible agent(s),

employee(s), or representative(s) did such act or failed to do such act or thing, thereby making the defendant liable.

VI.

FACTUAL BACKGROUND

9. Defendant TCPLF is a law firm, which was formed on February 16, 2010.

10. From July, 2012 through August, 2018, Defendant sought medical treatment from Plaintiffs for its clients with personal injury claims or causes of action. Plaintiffs undertook to provide necessary medical services to Defendant's clients with letters of protection¹ from Defendant. In return for Plaintiffs' treatment of Defendant's clients and deferral of any demands for payment, Defendant promised to set aside the proceeds from any recoveries obtained as a result of each client's personal injury case in order to reimburse Plaintiffs for services rendered. Attached hereto as Exhibit "A" is a list of Defendant's clients² treated by 1st Choice under letters of protection from Defendant. Attached hereto as Exhibit "B" is a list of Defendant's clients³ treated by ProHealth under letters of protection from Defendant.

11. Because of the assurances made by Defendant in the letters of protection, Plaintiffs continued to treat Defendant's clients and made no immediate demands for payment. 1st Choice fulfilled its promise, and upon completion of Defendant's clients' treatment in August, 2018, charges for treatment, goods, and services provided to Defendant's clients by 1st Choice totaled

¹A letter of protection is a written promise made by a personal injury attorney to a medical provider, whereby the attorney promises to pay the medical provider's bills for treating the attorney's client, after the attorney settles the client's personal injury case and the attorney comes into possession of the settlement proceeds. Letters of protection are given by personal injury attorneys to healthcare providers to induce the healthcare providers to extend credit to the attorneys' clients – especially in cases where the client does not have health insurance but needs follow-up care and treatment of the injuries sustained in an accident caused by the negligence of a third party.

² Exhibit "A" filed with the Court lists only last names and first initials of Defendant's clients treated by 1st Choice under letters of protection from Defendant. A version of Exhibit "A" with complete names (first and last) will be provided to Defendant or counsel for Defendant upon entry of an appearance in this cause.

³ Exhibit "B" filed with the Court lists only last names and first initials of Defendant's clients treated by ProHealth under letters of protection from Defendant. A version of Exhibit "B" with complete names (first and last) will be provided to Defendant or counsel for Defendant upon entry of an appearance in this cause.

\$732,410.02. Similarly, ProHealth fulfilled its promise, and upon completion of Defendant's clients' treatment in October, 2017, charges for treatment, goods, and services provided to Defendant's clients by ProHealth totaled \$3,750.00.

12. On information and belief, settlements for the claims of Defendant's clients treated by Plaintiffs under letters of protection from the Defendant was obtained by Defendant from the respective tortfeasors. On information and belief, Defendant distributed the proceeds of those settlements to itself and its clients. However, despite the promises made to Plaintiffs by Defendant in the letters of protection to promptly pay Plaintiffs out of any recovery from Defendant's clients' personal injury cases, no such payments have been made.

13. Plaintiffs have made numerous and repeated inquiries into the status of Defendant's clients' cases by both letter and telephone, but have not been able to resolve any of the 197 letters of protection sued upon.

VII.

CAUSES OF ACTION

14. Plaintiffs would respectfully show that each is entitled to recover money from Defendant for breach of contract, quantum meruit, breach of fiduciary duty, fraud, money had and received, conversion, promissory estoppel, and/or unjust enrichment.

15. Plaintiffs re-allege sections I through VI above and incorporate the same herein by reference as if fully set forth here verbatim.

Breach of Contract

16. The letters of protection from Defendant promised payment for medical and chiropractic treatment, goods, and services rendered to Defendant's clients from the proceeds of settlements obtained for those clients by Defendant. Plaintiffs, in reliance on Defendant's promises, rendered necessary medical and chiropractic treatment, goods, and services to

Defendant's clients and provided Defendant with billing statements. Defendant used Plaintiffs' bills as evidence of economic damages suffered by its clients in an effort to increase the settlement value of its clients' tort claims. Upon settling its clients' tort claims, Defendant, on information and belief, paid itself contingency attorney's fees from the proceeds of the settlements which were enhanced by Plaintiffs' bills. The unjustified refusal and failure by Defendant to cure the default and pay Plaintiffs the past due balances for medical and chiropractic treatment, goods, and services rendered under the letters of protection constitutes material breaches of Defendant's contracts with Plaintiffs.

17. As a result of Defendant's breach of agreements, Plaintiffs have sustained monetary damages, which include, but are not limited to, the usual and customary charges for the medical and chiropractic treatment, goods, and services provided to Defendant's clients and all monies wrongfully realized by Defendant as a result of Defendant's improper conduct, as well as expenses incurred attempting to collect said debts.

Quantum Meruit

18. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to recover the usual and customary charges for the medical and chiropractic treatment, goods, and services provided to Defendant's clients based in quantum meruit. In this respect, Plaintiffs provided necessary medical and chiropractic treatment, goods, and services to Defendant's clients with the express understanding that each would be compensated by Defendant for the same at its usual and customary rates. Also, Defendant accepted the medical and chiropractic treatment, goods, and services from Plaintiffs without objection. Defendant accepted the benefits of the medical and chiropractic treatment,

goods, and services rendered by Plaintiffs to Defendant's clients and, as a result, thereby became liable to Plaintiffs for the reasonable value thereof.

Breach of Fiduciary Duty

19. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to recover damages from Defendant for breach of fiduciary duty owed to Plaintiffs. When Defendant received settlement funds on tort claims involving treatment under letters of protection given to Plaintiffs, Defendant had a duty to hold those funds in trust until rival claims to the funds were resolved. Defendant breached the fiduciary duties owed to Plaintiffs by failing to pay Plaintiffs from the funds held in constructive trust, by giving preference to others with claims against the funds held in trust, by self-dealing with respect to the funds held in trust, by not engaging in fair and honest dealings with Plaintiffs, by violating the duties of candor, loyalty, utmost good faith, and full disclosure in his dealings with Plaintiffs and the funds held in constructive trust, and by failing to properly safeguard the funds held in trust. Defendant profited from his transactions with Plaintiffs.

20. Plaintiffs seek actual damages in the amount of at least \$736,160.02 along with exemplary damages because Defendant's breach of fiduciary duty was intentional.

Fraud

21. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to recover damages caused by Defendant's fraudulent conduct. Defendant knowingly made false and material representations to Plaintiffs during his course of business by making false promises regarding the payments to which Plaintiffs were entitled for medical and chiropractic treatment, goods, and services rendered to Defendant's clients under the letters of protection. Defendant intended that Plaintiffs rely on such

representations as contained within the letters of protection. Plaintiffs, in fact, did rely on such false and material representations, and Plaintiffs suffered injury therefrom.

Money Had and Received

22. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to recover money held by Defendant. On information and belief, Defendant holds monies that legally, and in equity and good conscience, belong to Plaintiffs. Plaintiffs are the owners of \$736,160.02 held by Defendant by virtue of the letters of protection from Defendant.

Conversion

23. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to recover personal property, namely settlement funds from tortfeasors and their insurers, converted by Defendant. Presently, there are monies due and owing to Plaintiffs from Defendant and Plaintiffs have an immediate right to possession of this personal property. Defendant has wrongfully exercised dominion and control over these funds. Accordingly, Plaintiffs have suffered damages in the amount of at least \$736,160.02 resulting from Defendant's wrongful exercise of dominion and control over settlement funds owed to Plaintiffs for medical and chiropractic treatment, goods, and services provided to Defendant's clients.

Promissory Estoppel

24. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to enforcement of Defendant's promises in the letters of protection under the doctrine of promissory estoppel. Defendant promised to pay Plaintiffs for medical and chiropractic treatment, goods, and services rendered to Defendant's

clients from the settlements obtained by Defendant on those clients' tort claims. Plaintiffs reasonably and substantially relied on the promises to their detriment by providing the medical and chiropractic treatment, goods, and services to Defendant's clients without full payment in advance. Defendant intended for Plaintiffs to rely on his promises and Plaintiffs' reliance was foreseeable by Defendant. Injustice can be avoided only by enforcing Defendant's promises in the letters of protection given to Plaintiffs.

Unjust Enrichment

25. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiffs would respectfully show that each is entitled to recover from Defendant under the theory of unjust enrichment. Defendant is unjustly enriched by retaining the benefits of the medical and chiropractic treatment, goods, and services rendered by Plaintiffs. Charges for medical and chiropractic treatment, goods, and services provided to Defendant's clients by Plaintiffs under letters of protection from Defendant increased the economic damages suffered by Defendant's clients as a result of the accidents that formed the bases of the tort claims for which Defendant represented them. The greater the client's economic damages, the greater the value of her claim against the tort defendant, which in turn leads to larger settlements. Larger settlements equate to larger contingency fees collected by Defendant and referrals from happy clients. These larger fees and referrals are a windfall to Defendant, who are profiting at Plaintiffs' expense.

VIII. **ATTORNEY'S FEES**

26. Due to Defendant's refusal to pay Plaintiffs the monies due for necessary medical and chiropractic treatment, goods, and services provided to Defendant's clients under Defendant's letters of protection, Plaintiffs have been required to employ the services of the undersigned attorneys. Plaintiffs are entitled to recover their reasonable attorney's fees and costs pursuant to

TEX. CIV. PRAC. & REM. CODE § 38.001(8), which amounts will be stated at such time as they can be determined, and for which amounts Plaintiff prays for judgment.

IX.
RIGHT TO AMEND

27. Plaintiffs specifically reserve the right to amend these pleadings upon pretrial discovery, order of the Court, or as counsel may agree.

X.
CONDITIONS PRECEDENT

28. All conditions precedent have occurred or are excused.

XI.
REQUEST FOR DISCLOSURE

29. Under Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

XII.
RULE 193.7 NOTICE

30. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give notice that all documents produced by Defendant in response to discovery authenticate the documents for use in all pretrial and trial proceedings.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant The Cox Pradia Law Firm, PLLC be cited to appear and answer and, that upon final trial hereof, Plaintiff have judgment against Defendant for:

- A. actual damages;
- B. exemplary damages;

- C. reasonable and necessary attorney's fees incurred by Plaintiffs in prosecuting their breach of contract causes of action against Defendant, through trial and all levels of appeal, if necessary;
- D. prejudgment interest on actual damages at the highest legal rate;
- E. all costs of Court expended in the pursuit of this action;
- F. post-judgment interest at the highest legal rate; and
- G. monetary relief of over \$200,000 but no more than \$1,000,000, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorney fees; and
- H. such other and further relief, general or special, legal or equitable, to which Plaintiffs may show themselves justly entitled and which the Court deems appropriate, but no further in total than \$1,000,000.

Respectfully submitted,

SULLINS, JOHNSTON, ROHRBACH & MAGERS

By: /s/ Jared C. Johnson

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